UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLACKLIGHT POWER, INC., Plaintiff, v. Q. TODD DICKINSON, Commissioner of Patents, United States Patent & Trademark Office, Defendant.	Civil Action No. 00-00422 EGS

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, defendant, by his undersigned attorneys, hereby moves this Court for an order granting summary judgment in his favor on the grounds that no genuine issue as to any material fact exists and that defendant is entitled to judgment as a matter of law. In support of this motion, the Court is referred to the accompanying memorandum of points and authorities and to the accompanying statement of material facts as to which there is no genuine issue. A draft order reflecting the requested relief is also attached.

Respectfully submitted,

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United States Attorney

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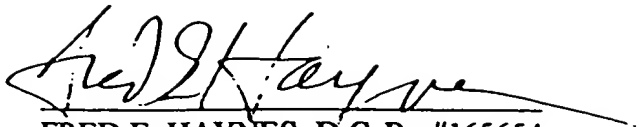
Assistant United States Attorney



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OF COUNSEL:

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neither arbitrary nor capricious. Plaintiff's '294 application is based on theories that are not generally accepted by the scientific community. The determination that one or more claims may be unpatentable is reasonable in light of the extraordinary claims asserted by plaintiff. *In re Chilowsky*, 229 F.2d 457, 462 (CCPA 1956) (alleged inventions that conflict with recognized scientific principles are required to overcome presumption of inoperativeness).

Plaintiff's description of its invention as "conductive, magnetic plastics that will revolutionize circuitry and aerospace engineering" (Complaint ¶ 9), as capable of providing a small battery charged to move an automobile 1000 miles at highway speeds without the use of fossil fuels (Complaint ¶ 9), and as "revolutionary technology" (Exhibit 9 at 3) provide further support for the Director's decision to reopen prosecution to ensure that a potentially invalid patent does not issue. These alleged accomplishments are astonishing by themselves, but when coupled with a new theory of quantum mechanics that allegedly is based on a medical doctor/ inventor deriving a new atomic theory that unifies Maxwell's Equations, Newton's Laws, and Einstein's General and Special Relativity (Ex. 2 at col.4) , the combination provides ample reasor for the USPTO to review the question of patentability.

As detailed in the accompanying statement of facts, the generally accepted understanding of the hydrogen atom is that its "ground state" is its lowest energy level and that its single electron can exist only with whole integer quantum numbers. (Ex. 1 at 210-11). In contrast to the conventional understanding of quantum mechanics, plaintiff believes that it can stimulate the hydrogen atom to go below its "ground state" and that fractional quantum numbers are possible for the hydrogen atom. These assertions are not known to the Group Director charged with examining this technology as generally accepted in the scientific community. (Ex. 5 at 5-6)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BLACKLIGHT POWER, INC.	)	C.A. NO. 00-422(EGS)
	)	
VS.	)	WASHINGTON, D.C.
	)	MAY 22, 2000
Q. TODD DICKINSON	)	10:00 A.M.

TRANSCRIPT OF MOTIONS HEARING

BEFORE THE HONORABLE EMMET G. SULLIVAN

UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: MICHAEL H. SELTER, ESQ.
JEFFREY A. SIMENAUER, ESQ.
JEFFREY S. MELCHER, ESQ.

FOR THE DEFENDANT: FRED E. HAYNES, ESQ.
KEVIN BAER, ESQ.

COURT REPORTER: FRANK J. RANGUS, OCR
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PROCEEDINGS RECORDED BY ELECTRONIC STENOGRAPHY; TRANSCRIPT PRODUCED BY COMPUTER.

WHAT THEY ARGUE IN THEIR BELIEFS IT'S CAPABLE OF DOING, THIS DISCOVERY.

MR. BAER: YOUR HONOR, BECAUSE --

THE COURT: ARE YOU ARGUING IT'S A FRAUD ON THE PUBLIC? YOU'RE NOT ARGUING THAT. YOU NEVER SAID IT WAS A FRAUD.

MR. BAER: YOUR HONOR, IT IS NOT -- WE DON'T BELIEVE IT'S A VALID (PAUSE) -- IT'S NOT PATENTABLE BECAUSE IT'S NOT VALID ACCORDING TO THE KNOWN RULES OF SCIENCE AND --

THE COURT: BUT IT'S NOT FRAUDULENT, THOUGH, IS IT?

MR. BAER: WELL (PAUSE) --

THE COURT: THAT'S NOT BEEN YOUR ARGUMENT UP TO THIS POINT.

MR. BAER: NO, I DON'T THINK I WANT TO USE THE TERM "FRAUD." DR. MILLS MAY BELIEVE HE'S INVENTED SOMETHING. WE DON'T BELIEVE HE'S DONE THAT AND WE'VE ASKED HIM TO COME IN AND PROVE THAT, AND THEY WILL HAVE AN OPPORTUNITY TO DO THAT. THE HARM IS THAT THERE IS A PRESUMPTION OF VALIDITY ATTACHED TO AN ISSUED PATENT. IT IS VERY HARD FOR A THIRD PARTY TO OVERCOME THAT. THEY CAN EXCLUDE OTHERS FROM THE MARKET. IF SOMEONE ACTUALLY INVENTS THIS, ASSUMING DR. MILLS HAS NOT INVENTED THIS, IF SOMEONE COMES ALONG AND INVENTS IT IN THE FUTURE, THEY COULD BE BLOCKED BY A VALID PATENT.

THE COURT: I SEE.

MR. BAER: SO THERE IS A HARM TO THE PUBLIC.

POSSIBLY DO THIS?" SO THERE'S AN EXAMPLE OF A THIRD PARTY CONTACTING US, AND THERE'S NOTHING SINISTER ABOUT THAT. IT'S JUST HOW THE AGENCY LEARNED ABOUT IT, AND THE REAL QUESTION WAS THE DECISION, IS THE DECISION RATIONAL?

THE COURT: WHAT ABOUT THE REAL PREJUDICE TO THE GOVERNMENT? COUNSEL MAKES A POINT. WHEN I ASKED THE QUESTION BEFORE, HE SAID, WELL, THE PREJUDICE IS IF SOMEONE PRESENTS AN IDENTICAL PATENT APPLICATION AND IS UNABLE TO PROVE PATENTABILITY, THAT PERSON WILL BE PRECLUDED FROM RECEIVING A PATENT.

MR. BAER: CORRECT. NOT ONLY RECEIVING A PATENT --

THE COURT: THE GOVERNMENT'S ARGUMENT, THOUGH, IS THAT THIS INVENTION, IF IT IS ONE, CANNOT BE PATENTED BECAUSE IT'S NOT FRAUDULENT, BUT IT'S NOT VIABLE?

MR. BAER: YOUR HONOR --

THE COURT: IT'S NOT TRUE? WHAT IS IT?

MR. BAER: -- IF THIS APPLICATION WAS THE CURE FOR CANCER BUT WE DIDN'T BELIEVE THEY HAD THE CURE FOR CANCER, BUT WE ISSUED IT ANYWAYS, WHEN SOMEONE COMES ALONG FIVE YEARS FROM NOW WITH A CURE FOR CANCER, THEY WOULD BE PRECLUDED BY THIS PATENT. PLAINTIFF COULD EXCLUDE THEM FROM THE MARKETPLACE.

THE COURT: RIGHT.

MR. BAER: YOU CAN'T PRACTICE THIS.

THE COURT: WHAT YOU'RE SAYING IS, THIS INVENTION CONTRAVENES ALL THE KNOWN LAWS OF PHYSICS AND CHEMISTRY AND IT

CAN'T, IT JUST (PAUSE) -- ARE YOU SAYING IT'S NOT TRUE? IT'S NOT VIABLE?

MR. BAER: IT IS NOT KNOWN AT THIS POINT.

THE COURT: NOT KNOWN AT THIS POINT. RIGHT.

MR. BAER: BUT THAT DOESN'T MEAN --

THE COURT: BECAUSE IT'S NOVEL.

MR. BAER: BECAUSE IT IS VERY NOVEL. IT IS EXTRAORDINARILY NOVEL, AND IT'S NOT TO SAY THAT THEY HAVE NOT INVENTED SOMETHING. MAYBE THEY HAVE, BUT IT NEEDS TO GO THROUGH FURTHER ADMINISTRATIVE REVIEW. AND IF THEY TRULY HAVEN'T DONE THIS, CREATED THIS NEW ENERGY SOURCE, BUT THEY GET A PATENT, THEY CAN PRECLUDE EVERYONE ELSE FROM EVER, FOR THE NEXT 17 YEARS AT LEAST, FROM PROSECUTING THIS INVENTION. SO WHEN SOMEONE COMES ALONG AND INVENTS THIS TEN YEARS DOWN THE ROAD, PLAINTIFF CAN SAY, "OH, YOU CAN'T DO THAT" OR "YOU HAVE TO PAY ME ROYALTIES."

THE COURT: SO THE ANSWER TO MY QUESTION IS, THE GOVERNMENT IS NOT PREJUDICED AT ALL. YOU JUST ANTICIPATE PREJUDICE TO SOMEONE ELSE IN THE FUTURE IF SOMEONE ELSE IS ABLE TO DEMONSTRATE THAT THE ENERGY SOURCE EXISTS.

MR. BAER: THE PREJUDICE WOULD ALSO BE, WE'D BE ORDERED TO ISSUE A PATENT THAT WE DO NOT BELIEVE AT THIS POINT IS PATENTABLE, AND THAT IT'S NOT A REGISTRATION SYSTEM AT THE PATENT AND TRADEMARK OFFICE. CONGRESS HAS CHARGED THE DIRECTOR WITH EXAMINING PATENT APPLICATIONS, AND THAT'S WHAT WE'RE